

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MEYNARD DESIGNS, INC. AND EARTH
VISIONS INC.

Plaintiffs,

v.

CIVIL ACTION NO. 05 cv 11781 NMG

EARTH PRODUCTS INC.

Defendant.

EARTH PRODUCTS INC.,

Counterclaim-Plaintiff and
Third Party Plaintiff

v.

MEYNARD DESIGNS, INC.
AND EARTH VISIONS INC.,

Counterclaim-Defendants,

PLANET, INC.,

Third Party Defendant.

**EARTH PRODUCTS INC.'S INITIAL
DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)**

Pursuant to Fed. R. Civ. P. 26(a)(1), Defendant and Counterclaim-Plaintiff Earth Products, Inc. ("Earth Products") makes the following initial disclosures. The initial disclosures are based on information now reasonably available and Earth Products' current understanding of

the claims and defenses in this case. Earth Products is not providing information not reasonably available at this time. Earth Products reserves the right to object to discovery into any listed subject matter. Earth Products reserves the right to supplement these initial disclosures pursuant to Fed. R. Civ. P. 26(e) as more information becomes known to Earth Products and as the claims and defenses of other parties are more clearly explained and understood.

A. Witnesses

Earth Products identifies the following potential witnesses who, based on information and belief at this time, may have discoverable information relevant to claims and defenses in the above-titled action, along with the possible subjects of their testimony. Some individuals will likely have more knowledge than others, and the knowledge of many of the individuals will likely be overlapping. Those listed below who are Earth Products employees may be contacted in this action only through Earth Products' undersigned counsel.

Name	Contact Information	Possible Knowledge
Ascari Tshaka	Unknown	Use/abandonment of EARTH and/or EARTH SHOE marks
Gustave Hulkower	Unknown	Use/abandonment of EARTH and/or EARTH SHOE marks
Caprice Scott-Leggatt	Mondial Trading Co. Cayman Islands	Use of EARTH and/or EARTH SHOE marks by Meynard
Kareen Walter	Mondial Trading Co. Cayman Islands	Use of EARTH and/or EARTH SHOE marks by Meynard
E.J. Christian	Mondial Trading Co. Cayman Islands	Use of EARTH and/or EARTH SHOE marks by Meynard
David Wolf	Wolf Greenfield	Fraud in obtaining EARTH trademark registrations; purported assignment of EARTH and EARTH SHOE marks from Tonus, Inc.; Purported assignment of EARTH and EARTH SHOE marks from Mondial Trading
Kenneth Cummins	Law office of Kenneth Cummins	Purported assignment of EARTH and EARTH SHOE marks from Tonus, Inc.
David Jonah	Unknown at this time	Use of EARTH and/or EARTH SHOE marks by Meynard
Marina (last name)	Unknown at this time	Knowledge of responses to inquiries to

unknown)		EARTH message board at www.earthfootwear.com
Arlette Meynard	Wolf Greenfield	Use of EARTH and/or EARTH SHOE marks by Meynard
Michel Meynard	Wolf Greenfield	Use of EARTH and/or EARTH SHOE marks by Meynard
Philippe Meynard	Wolf Greenfield	Use of EARTH and/or EARTH SHOE marks by Meynard
Unknown employees of Wal-Mart	Unknown at this time	Use of EARTH and EARTH SHOE marks by Wal-Mart
Unknown employees of Nordstrom, Whole Foods, REI, Walking Company, Roots and other retailers	Unknown at this time	Sales of products using EARTH and/or EARTH SHOE marks
Jeff Larsen	Earth Products	Adoption and use of EARTH mark by Earth Products
Chris Miller	Earth Products	Adoption and use of EARTH mark by Earth Products
Jim Behringer	Earth Products	Adoption and use of EARTH mark by Earth Products

In addition to those individuals specifically identified above, Earth Products also incorporates the names of other current or former Earth Products employees found in documents that may be produced in this action, who may have discoverable information related to the subject matter set forth in those documents. Earth Products also incorporates by reference the identities of individuals who may submit declarations in this case or whose names appear in pleadings and papers filed in this case.

B. Documents

Pursuant to Fed. R. Civ. P. 26(a)(1)(B), Earth Products identifies the following general categories of "documents, data compilations, and tangible things" within Earth Products' "possession, custody, or control" that Earth Products might use to support its claims or defenses.

1. Advertisements, product packaging, hangtags, catalogs, and other promotional and marketing materials relating to adoption and use of the EARTH trademark.

2. Documents summarizing financial and market results of products and services offered by Earth Products under the EARTH trademark.
3. Documents summarizing expenditures on advertising, promoting, and marketing of products and services offered by Earth Products under the EARTH trademark.
4. Documents relating to consumer opinions of products and services offered by Earth Products under the EARTH trademark.
5. Other documents that generally relate to products and services offered by Earth Products under the EARTH trademark.
6. Documents regarding third-party use of EARTH and/or EARTH SHOE trademarks.

The categories of documents listed below are located either in the files of K-2 Corporation in Seattle, Washington or in the files of Earth Products in Carlsbad, California. Earth Products preserves its objections to production of specific documents and categories of documents until expressly requested by a defendant. In addition, a protective order sufficient to protect Earth Products' confidential information will need to be entered prior to production of any confidential documents. Furthermore, at this time, the other parties in this case have not provided a clear explanation of their claims and defenses. Thus, Earth Products' disclosure of potential documents relevant to its claims and defenses is as accurate as possible given the other parties' limited explanations to date. Earth Products reserves the right to supplement these disclosures of categories of documents once defendants' explanations are clarified.

C. Computation of Damages

Earth Products seeks damages adequate to compensate it for the infringement, unfair competition, false designation of origin, violations of the various state business laws, and false

and fraudulent registrations of the Meynard Entities. Earth Products also seeks exceptional damages to Earth Products pursuant to 15 U.S.C. § 1117, Mass. Gen. L. ch. 93A and all other applicable laws, plus reasonable attorney's fees and costs incurred in this matter. Earth Products' damages are based primarily on the Meynard Entities' profits, and thus Earth Products cannot provide a determination of the amount of damages until reviewing the Meynard Entities' documents disclosing the extent of those activities. Earth Products may also be entitled to other damages available by statute and reserves the right to seek such damages after taking discovery regarding facts relevant to such damages. Earth Products' attorney fees will be an amount that will only be known at the action's completion.

D. Insurance Agreements

Earth Products is not aware of any insurance agreement relevant to this action under Fed. R. Civ. P. 26(a)(1)(D).

Dated: September 14, 2006

By: /s/ Gina Lombardo

Gina Lombardo

Email: gombardo@proskauer.com

Kimberly A. Mottley

Email: kmottley@proskauer.com

PROSKAUER ROSE LLP

One International Place

Boston, MA 02110-2600

Phone: 617.526.9606

Fax: 617.526.9899

J. Christopher Carraway

Email: chris.carraway@klarquist.com

Cindy L. Caditz

Email: cindy.caditz@klarquist.com

KLARQUIST SPARKMAN, LLP

121 S.W. Salmon Street, Suite 1600

Portland, OR 97204

Phone: 503-595-5300

Fax: 503-595-5301

Attorneys for Earth Products Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 14, 2006, a true copy of the foregoing **EARTH PRODUCTS INC.'S INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)**, was served via hand delivery (in addition to the Court's ECF service) to:

Michael Albert
David Wolf
Laura Topper
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210

*Attorneys for Plaintiffs, Meynard Designs, Inc.
Earth Inc., and Planet, inc.*

By: /s/ Gina Lombardo
Gina Lombardo

CERTIFICATE OF SERVICE